

195337

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Alpine Utilities, Inc. for  
Adjustment of Rates and Charges for the  
Provision of Sewer Service and  
Establishment of Additional Rates and  
Charges

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2008 - 190 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

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Address: Post Office Box 8416

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Columbia, SC 29202

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input checked="" type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

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JOHN M.S. HOEFER  
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MICHAEL R. BURCHSTEAD  
ANDREW J. MACLEOD

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

TRACEY C. GREEN  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

September 30, 2008

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

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2008 SEP 30 PM 3:47  
SC PUBLIC SERVICE  
COMMISSION

RE: Application of Alpine Utilities, Inc. for Adjustment of Rates and Charges for the  
Provision of Sewer Service and Establishment of Additional Rates and Charges;  
Docket No. 2008-190-S

Dear Mr. Terreni:

Enclosed for filing in the above-captioned matter is Late Filed Hearing Exhibit Number 1 which is a copy of the contract between Alpine Utilities, Inc. and Fairfax Enterprises, Inc. to serve Landmark Apartments in Richland County, South Carolina.

By copy of this letter, I am serving a copy of these documents upon all parties of record and enclose a Certificate of Service to that effect. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning them to me via the enclosed self-addressed envelope.

If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

Enclosures

cc: Nanette S. Edwards, Esquire (via electronic and first class mail)  
Richard L. Whitt, Esquire (via electronic and first class mail)

STATE OF SOUTH CAROLINA     )  
                                      ) SEWER UTILITY SERVICE AGREEMENT  
COUNTY OF LEXINGTON         )

This Agreement entered into this 7th day of March, 1972, by and between Alpine Utilities, Inc., hereinafter known as the "Utility", and Fairfax Enterprises, Inc., a North Carolina Corporation, hereinafter known as the "Developer".

WHEREAS, the Developer intends to develop and construct a multi-family, residential apartment complex of not in excess of four hundred (400) units with normal related structures, in two (2) phases, beginning around March 1, 1972; and,

WHEREAS, the Utility has certain sewerage facilities which it will make available to the Developer, its successors and assigns; and,

NOW THEREFORE, for the sum of Five (\$5.00) Dollars and other valuable consideration, the receipt of which is acknowledged, the Utility, its successors and assigns do hereby agree:

(1) To reserve and to provide in perpetuity, except as hereinafter set forth, sewer service and facilities sufficient and adequate to meet the needs of the apartments and related structures referred to above, to be constructed by the Developer on the property hereinafter described.

(2) To obtain the approval of such state agencies as is required in regard to the furnishing of these services and the setting of these rates, including the South Carolina State Board of Health and the South Carolina Public Service Commission.

SC PUBLIC SERVICE  
COMMISSION

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(4-A) The Developer agrees that it will continue to take service from the Utility as long as the Utility remains approved to render such service by the S.C. State Board of Health.

(5) To indemnify the Utility for any monthly service charge not paid on any apartment at the rate of Three (\$3.00) Dollars per apartment, and to transmit on or before the 15th day of each month the total amount due based on the rate of Three (\$3.00) Dollars per apartment.

It is agreed between the parties that the Developer shall act as agent for the Utility in collecting the monthly service charge and shall have the right in its name, place and stead to take such action as shall be permitted by law for the collection of past due monthly sewer charges.

It is understood and agreed that in the event the system belonging to the Utility shall be transferred to a governmental agency for operation and maintenance and is released from its commitment for operation and maintenance to the State Board of Health and the State Public Service Commission, that the Developer does hereby agree to release the Utility from any further obligations under this Agreement. Provided however, that the Developer shall have no further obligation for fees or charges except as are standard and customary within the jurisdiction of the governmental agency.

It is understood and agreed that this Agreement shall be void ab initio in the event the Developer does not begin construction of the apartments within the year 1972.

This agreement shall inure to the benefit of the successor and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and their seals the day and year first above written.

WITNESS:

Gayle L. Davis  
Laurie L. Wilson

ALPINE UTILITIES, INC.

By:

Edward A. Dwyer, Pres.

WITNESS:

FAIRFAX ENTERPRISES, INC.

(1) J. Camille Glenn

BY:

Fred B. Johnson

Developer

Asst. Secretary

(2) Mary B. Gaudin

VICE PRES. - FAIRFAX ENT., INC.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

PERSONALLY appeared before me Faye L. Davis  
and made oath that s/he saw the within-named Alpine Utilities,  
Inc., by J. Donald Dial its President

sign, seal and, as its act and deed, deliver the within-written  
Sewer Utility Service Agreement for the uses and purposes  
therein mentioned and that s/he with Louise C. Wynne  
witnessed the execution thereof.

Faye L. Davis  
Faye L. Davis

SWORN to before me this

7th day of March, 1972.

Louise C. Wynne (P.S.)  
Notary Public for South Carolina

My commission expires: November 24, 1980

North  
STATE OF ~~SOUTH~~ CAROLINA )  
COUNTY OF Wake )

PERSONALLY appeared before me

J. Camille Glenn  
Mary B. Gaudin

and made oath that s/he saw the within-named Fairfax Enterprises,  
Inc. by Fred B. Johnson its  
Vice-President sign, seal and, as its act and deed,  
deliver the within-written Sewer Utility Service Agreement for

the uses and purposes therein mentioned and that s/he with

*Mary S. Sardone*

witnessed the execution thereof.

① *J. Carroll Klein*

SWORN to before me this

10<sup>th</sup> day of *March*, 1972.

② *Mary S. Sardone* (L.S.)  
Notary Public for *State of North Carolina*  
*County of Wake*  
My commission expires: *October 29, 1974*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

A G R E E M E N T

THIS AGREEMENT entered into this 21<sup>st</sup> day of October, 1975, by and between ALPINE UTILITIES, INC., hereinafter known as "Utility", and FAIRFAX ENTERPRISES, INC., a North Carolina Corporation, hereinafter known as the "Developer".

WHEREAS, the parties entered into an Agreement dated March 7, 1972, for the furnishing of certain sewer services by the Utility at a certain specified rate to be paid by the Developer. In addition, there were other duties and obligations of the parties; and,

WHEREAS, on the 9th day of July, 1975, the Utility delivered in writing to the Developer notice of its intention to cancel the above-referred-to contract and, in fact, did so cancel said Agreement; and,

WHEREAS, the parties, after negotiation, desire to reinstate said Agreement and reaffirm its validity subject to certain amendments to be set forth herein.

NOW, THEREFORE, for the sum of Five (\$5.00) Dollars, and other valuable consideration it is agreed by and between the parties that the notice of intention to cancel the Agreement dated the 9th day of July, 1975, and the subsequent cancellation of the said Agreement are hereby rescinded and said Agreement is reinstated in each and every respect, except as may hereinafter be amended, and its validity reaffirmed.

The parties agree to amend said contract by changing Paragraph 5 thereof, so that when amended Paragraph 5 will read as follows:

- "(5) To indemnify the Utility for any monthly service charge not paid on any apartment at the rate of Four (\$4.00) Dollars per apartment, and to transmit on or before the 15th day



of each month the total amount due based on the rate of Four (\$4.00) Dollars per apartment."

The parties agree to further amend said contract by adding and inserting two new paragraphs immediately following the second unnumbered paragraph following Paragraph 5. Said first new paragraph to read as follows:

"Anything herein contained to the contrary notwithstanding, it is agreed that monthly sewer rates of Four (\$4.00) Dollars per apartment per month shall be a fixed and permanent rate, not subject to rate adjustment or increase, for a period of Fifty (50) years from the date of this amendment."

Said second new paragraph to read as follows:

"It is specifically agreed by the Utility that the fixed rate of Four (\$4.00) Dollars per apartment unit per month and the Fifty (50) year term varies from the Utility's normal rate and term for apartment complexes and is in consideration of the following actions by the developer, to wit: (1) installing and maintaining the pumping station; (2) installing and maintaining the collector lines within the project; (3) installing and maintaining the connector line from the pumping station to the Utility's main outfall line; (4) collecting the monthly rental and transmitting same to the Utility; (5) obtaining and transferring the rights-of-way for the sewer line to the Utility; and, (6) agreeing to indemnify the Utility for the monthly rate charged on each apartment within the complex; and, (7) the agreement by the Developer as set forth in Paragraph (3) of the March 7, 1972 Agreement to allow the Utility to tap or enlarge and use for itself or its customers the main connector line of the Developer."

It is understood and agreed that, except as amended herein, all other terms and provisions of the Agreement between the parties dated April 7, 1968, shall remain in full force and effect.

It is agreed that this Agreement shall be binding  
on the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the undersigned have set their  
hands and seals the day and year first hereinabove written.

THE FAIRFAX CORPORATION,  
FORMERLY KNOWN AS

FAIRFAX ENTERPRISES, INC.

By:

Robert J. Stephens

ALPINE UTILITIES, INC.

By:

Donald D. Deel

WITNESSES

[Signature]  
[Signature]

Rhonda L. Chidress  
Shirley P. Ellen

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON ) A G R E E M E N T

THIS Agreement of guaranty and indemnification by and between J. DONALD DIAL, hereinafter known as Guarantor, and Fairfax Enterprises, Inc., a North Carolina Corporation, known as Developer, executed this 31<sup>st</sup> day of October, 1975, provides as follows:

WHEREAS, J. Donald Dial by virtue of his stock ownership would benefit personally from the benefits to the Utility flowing from that certain proposed Agreement between the Developer herein and Alpine Utilities, Inc.; and

WHEREAS, the Utility previously cancelled a contract dated March 7, 1972, by and between itself and the Developer and,

WHEREAS, in order to encourage the Developer to enter into this new Agreement, a copy of which is attached hereto and made a part hereof by reference, the Guarantor agrees to personally guarantee the Utility's performance of the proposed contract and indemnify the Developer from loss thereunder.

NOW, THEREFORE, for the sum of Five (\$5.00) Dollars the above recital and other valuable consideration, it is agreed:

1. That if the Developer will enter into the Agreement with the Utility, a copy of which is attached and incorporated by reference, the Guarantor covenants and agrees to personally guarantee the performance by the Utility of each and every provision of said Agreement required of it so long as the Developer shall not be determined by no lower court of law than a South Carolina Circuit Court as being in breach of its contract with the Utility. Provided, however, in the event the Developer should appeal such decision and prevail, then and in that event, the Guarantor's obligation hereunder would continue as if it had never been stayed.

The Guarantor further agrees to personally indemnify the Developer from any loss occasioned by the failure of the Utility to comply with the provisions of the proposed Agreement.

It is agreed that, in addition to other possible losses which could occur by virtue of the Utility's failure to perform, any loss due to increased rates, other than upon a sale to a municipal or public utility, or loss due to termination of sewer service based on controversy over such increased rates, shall constitute liquidated damages hereunder and shall be computed as follows: First, the amount of any increased rate over \$4.00 per apartment multiplied by 336 and then by multiplying the figure times the elapsed period the increase had been in effect; Second, the cost per month per apartment to obtain reasonable substituted sewer service multiplied by the elapsed period the termination has been in effect. It is further agreed that guaranty and the indemnity by the Guarantor shall continue and not be terminated by an action to recover losses due to breach of the Agreement for a given period of time thereunder.

Provided however, and anything herein contained the contrary notwithstanding, the Guarantor's obligations hereunder shall terminate in the event the sewer services are taken over by a municipal or public sewer utility. Such termination the Guarantor's obligation shall not apply to losses incurred by the Developer under its Agreement with the Utility prior to the date such service is assumed by a municipal or public sewer utility.

It is agreed that this Agreement shall be binding on the parties hereto, their heirs, executors, successors and assigns.

IN WITNESS WHEREOF the undersigned parties have

this 31<sup>st</sup> day of October, 1975, set their hands and seals.

WITNESSES:

Donald L. Childers

Ann R. Edlin

Donald L. Childers

Ann R. Edlin

Robert J. [illegible]  
[illegible]  
[illegible]

J. Donald Dial

J. DONALD DIAL, GUARANTOR

THE FAIRFAX CORPORATION, FORMERLY  
KNOWN AS  
FAIRFAX ENTERPRISES, INC.

By: Robert J. [illegible]

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2008-190-S**

IN RE:

Application of Alpine Utilities, Inc.  
for Adjustment of Rates and Charges  
for the Provision of Sewer Service  
and Establishment of Additional Rates  
and Charges.

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Late Filed Hearing Exhibit Number 1** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

Richard L. Whitt, Jr., Esquire  
**Austin & Rogers, P.A.**  
Post Office Box 11716  
Columbia, South Carolina 29201

SC PUBLIC SERVICE  
COMMISSION

2008 SEP 30 PM 3:48

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Clark Fancher

Columbia, South Carolina  
This 30<sup>th</sup> day of September, 2008.